

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 218 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGVAT BRIJNAL BARAHMAN @ B.KSHUKAL

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioners
MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 21/10/1999

ORAL JUDGEMENT

Rule. Learned APP Mr. Mankad appears and waives
service of Rule for the respondent State.

Applicants are original accused who are convicted
for the offence under sec.381 R/w Sec.114 of the I.P.Code
by the learned Metropolitan Magistrate, Court No.7,
Ahmedabad vide judgment and order dated 13.11.1998 in
Criminal Case No.650/85. The applicants preferred appeal

against the said judgment and order before the learned Addl. City Sessions Judge, Ahmedabad being Criminal Appeal No. 149/98 and learned Addl. City Sessions Judge, vide his judgment and order dated 12.3.1999 whereby the learned City Sessions Judge convicted the applicants accused to undergo S/I for 6 months and to pay a fine of Rs. 500/ (Rs. five hundred only) each.

Mr. Lakhani, learned counsel appearing for the applicants-accused has taken me through the prolonged history of criminal proceedings against the present applicants and submitted that the applicant committed alleged theft on 25.3.1985 somewhere between 3.00 P.M.. to 11.00 P.M.. It is important to note that the initially the applicants have been tried by the learned Metropolitan Magistrate, Ahmedabad and came to be convicted by the learned Metropolitan Magistrate, Ahmedabad for the offence under sec.381 R/w 114 of the I.P.Code and were ordered to undergo S/I for 6 months and to pay a fine of Rs.500/ each, I/d to undergo further S/I for 45 days. Against the said judgment and order passed by the learned Metropolitan Magistrate, the applicants preferred an appeal being Cri.Appeal No. 253/86 before the learned City Sessions Judge, Ahmedabad who, vide his judgment and order dated 15.1.1987, remanded the matter back to the learned Metropolitan Magistrate for re-trial afresh. The learned Metropolitan Magistrate, after reappreciating the evidence, acquitted both the applicants from the charges levelled against them by the judgment and order dated 17.3.1990, against which the State preferred an appeal being Criminal Appeal No.464/90 before this Court and vide judgment and order, this Court remanded matter back to the learned Metropolitan Magistrate, Ahmedabad directing him to pass appropriate order after appreciating the evidence. The learned Metropolitan Magistrate, Ahmedabad, after reappreciating the evidence, convicted the applicants-accused and sentenced as aforesaid vide judgment and order dated 13.11.1998 in Cri.Case No.650/98. On appeal being filed against the said judgment being Cri.Appeal No. 149/98, the same came to be rejected by the learned City Sessions Judge by his judgment and order dated 12.3.1999 confirming the judgment and order passed by the learned Metropolitan Magistrate, Ahmedabad. Hence, the applicants have preferred the present Cri. Revision Application.

After carefully reading of evidence and reasons assigned by the both the Courts below, Mr. Lakhani, learned counsel appearing for the applicants accused fairly submitted that so far as order of conviction is concerned, applicants have no case on merits, but both the courts below have erred in not granting probation to

the applicants, more particularly when the applicants were acquitted by the learned Metropolitan Magistrate initially and alleged offence was the first offence, financial position of the applicants was weak and applicants accused having liability to maintain their respective families, as well as in view of prolonged history of criminal litigation resulting into hanging sward of criminal proceedings over the head of the applicants and keeping all these circumstances, both the courts below ought to have granted benefit under the Probation of Offenders Act and/or benefit of the provisions under sec. 360 of Cr.P.Code. Mr. Lakhani has further submitted that when this Cri.Revision Application came up for hearing for the first time on 9.4.1999, he has mainly submitted on the line of grant of probation to the applicants accused and, therefore, this Court had directed the Probation Officers concerned to inquire into the matter and submit report at the earliest. It is also on record that applicants-accused were on bail all throughout and they are not involved in any identical type of offence or in any criminal offence. Today, this Court is equipped with the reports submitted by the Probation Officers in respect of both the applicants accused. Report of Probation Officer, Surat in respect of applicant No.1 Bhagwat Brinjal Brahman B.K.Shukal is dated 27.9.1999 and the report of applicant no.2 Vithalbhai Antubhai Marathi is prepared by the Probation Officer, Ahmedabad which is dated 4.9.1999. Both the reports are position and in favour of the applicants- accused and both the Probation Officers have opined that the offence committed by each accused is the first offence, accused are not the habitual offenders, they are comparatively young in age and at present are performing their social obligations properly and are working honestly. Their conduct is good, normal and cordial. It has been also observed therein that muddamal found by the police during the course of investigation was of meagre amount and execution and implementation of order imposing substantive sentence on both the applicants accused may create a bad social impact on the grown up children and in the area where the applicants are residing at present. It may bring a great mental stress on the applicants as well as their family members. It is opined that the Court should exercise its power in this case by granting probation to the applicants under the provisions of the Probation of the Offenders Act.

It is important to note that before the learned Addl. City Sessions Judge, Ahmedabad same prayer for releasing the applicants accused on probation was made, but the learned Addl. City Sessions Judge, without considering the facts as enumerated in the reports of

Probation Officers as well as socio-economic background of the applicants nor the same was considered sympathetically and rejected the said prayer. Therefore, similar prayer is made before this Court also in this Cri. Revision Application. Considering the reports submitted by the Probation Officers, looking to the young age of the applicants, their socio-economic background and the fact that offence is as old as 15 years during which period much waters have flown and applicants have settled themselves in their socio-economic pattern and more particularly when applicants are not the habitual offender and this being their first offence, In my view, this is a fit case where this Court should exercise its powers and grant benefit of probation to the applicants under the provisions of the Probation of Offenders Act. The object behind enacting this Act is to provide avenues and opportunities to young offenders who, under some compelling circumstances or due to young age who have committed such offence without knowing about grave or serious consequences thereof, to improve themselves. Sending them behind the bars in young age, would provide them an opportunity to come into contact with the hardened criminals and would become hardened criminals. School of reform is strong in this field. As observed above, in the instant case, more than 15 years have passed and it would be not in the interest of applicants accused as well as their family members to send them now behind the bar. Offence is not so serious warranting them to undergo sentence. Further, reports submitted by the Probation Officers are also positive. Under the circumstances, this is a fit case to grant probation in favour of the applicants under the provisions of Probation of Offenders Act. It is also important to note that learned counsel Mr. Lakhani appearing for the applicants accused submitted that he is not challenging the order of conviction and sentence on merits, but his only prayer is that the applicants accused should be granted benefit of probation under the provisions of the Probation of Offenders Act. Hence, this court has no hesitation in confirming the order of conviction passed by the trial Court and confirmed by the Sessions Court. As the learned counsel appearing for the applicants has not pressed this application on merits, without going into the merits of the matter and without dealing with any factual or legal aspect considered by both the Courts below and I confirm the impugned order of conviction impugned in this Criminal Revision Application. However, as observed above, infliction of substantive sentence requires to be suspended in the present case and applicants accused should be granted benefit of probation under the provisions of the Probation of Offenders Act by

taking lenient view in the matter.

For the reasons aforesaid, this Criminal Revision Application is partly allowed. The impugned judgment and order dated 13.11.1998 passed by the learned Metropolitan Magistrate, Court No.7, Ahmedabad in Criminal Case No.650/85 sentencing the applicants accused to under go S/I for 6 months and to pay a fine of Rs.500/ (Rs. Five Hundred only) each as well as the impugned judgment and order dated 12.3.1999 passed by the learned Addl. City Sessions Judge, Ahmedabad in Criminal Appeal No. 149/98, are hereby confirmed so far as conviction and sentence is concerned. However, the applicants accused are given benefit of probation under sec.4 of the Probation of Offenders Act and are hereby ordered to be released on probation by suspending and not implementing the order of sentence on a condition that each of the applicant accused shall execute a Bond the sum of Rs.5000/ (Rs. Five thousand only) with one surety each of the like amount for a period of 2 years for Good Conduct containing all usual terms and conditions and in the form as prescribed under the provisions of the Probation of Offenders Act and Rules framed thereunder. In case of breach of any of the conditions, the applicants accused will be liable to undergo sentence imposed by the learned Magistrate. The applicants accused shall also undertake that they will surrender to custody for undergoing custody as and when called upon by the Competent Court during the aforesaid period of two years. The applicants accused shall execute Bond and furnish surety as aforesaid within a period of 30 days from the date of receipt of writ of this order with the trial Court failing which this order granting benefit of probation shall automatically stand cancelled and it will be construed that applicants accused are not ready and willing to avail of this benefit and, in that event, the trial Court shall issue a Non Bailable Warrant against the applicants accused for arresting them and to commit them to the custody for undergoing the sentence imposed by the learned Magistrate.

Rule is made absolute accordingly.

21-10-1999 [C.K. BUCH, J]

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